

JUDGMENT OF THE COURT (FOURTH CHAMBER)  
5 OCTOBER 1983 <sup>1</sup>

**Ministero delle Finanze**  
**v Esercizio Magazzini Generali SpA and Mellina Agosta Srl**  
**(references for a preliminary ruling**  
**from the Corte d'Appello, Catania)**

(Payment of customs duties — Exemption)

Joined Cases 186 and 187/82

*European Communities — Own resources — Customs duties — Customs debt — Theft of goods subject to customs duties — No extinction of customs debt*  
(Council Directive 79/623, Art. 4)

It appears from Article 4 together with the ninth recital in the preamble to Directive 79/623 that the reasons for extinction of the customs debt must be based on the fact that the goods have not been used for the economic purpose which justified the application of import duties. In the case of theft, it may be assumed that the goods pass into the Community commercial circuit. It follows that the loss of the goods for the purposes of the directive does not

embrace the concept of theft, regardless of the circumstances in which it has been committed.

Accordingly, according to the existing Community customs provisions the removal by third parties of goods subject to customs duty, even through no fault of the taxable person, does not extinguish the obligation to pay duty on them.

In Joined Cases 186 and 187/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Civil Section of the Corte d'Appello [Court of Appeal], Catania, for a preliminary ruling in the actions pending before that court between

<sup>1</sup> — Language of the Case: Italian.

MINISTERO DELLE FINANZE [Ministry of Finance], in the person of the Minister for the time being,

and

ESERCIZIO MAGAZZINI GENERALI SPA, in liquidation, Catania,

and

MELLINA AGOSTA SRL, Catania,

on the interpretation of the concept of *force majeure* for the purposes of Community customs law,

THE COURT (Fourth Chamber)

composed of: A. O’Keeffe, President of Chamber, P. Pescatore, G. Bosco, T. Koopmans and K. Bahlmann, Judges,

Advocate General: G. F. Mancini

Registrar: P. Heim

gives the following

## JUDGMENT

### Facts and Issues

The order making the reference, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

#### I — Facts and written procedure

1. According to the existing Italian customs legislation, “in the case of goods

on which customs duty is payable, the event giving rise to the fiscal obligation is constituted, for foreign goods, by their release for consumption in the customs territory . . .” (Article 36 (1) of the Consolidated Customs Laws, approved by Decree No 43 of the President of the Republic of 23 January 1973, *Gazzetta Ufficiale* 1973, No 80). “For the purposes of paragraph (1), with the sole exception of the cases referred to in Article 37, goods or a part thereof shall be regarded as having been definitively

released for consumption if they have been unlawfully removed without compliance with the customs obligations or if, in any event, they have not been presented within the prescribed periods for customs inspection and control or if they have not been recovered for the purposes of the above-mentioned operations ...” (Article 36 (5)). The exception referred to in that paragraph is defined as follows in Article 37: “The event giving rise to the fiscal obligation shall be deemed not to have occurred when the taxable person establishes that the failure to fulfil his customs obligations or the failure to present all or a part of the goods for customs clearance or for customs inspection or control, even after the declaration of release for consumption has been accepted, is due to the loss or destruction of the goods through unforeseeable circumstances or through *force majeure* or as a result of events attributable to the minor negligence of a third party or the taxable person himself.” Under Article 37 (2), the event giving rise to the fiscal obligation is similarly deemed not to have occurred when the loss of the goods on which customs duty is payable results from natural or technical causes.

Article 22 of Law No 891 of 22 December 1980 (Gazzetta Ufficiale 1980, No 355) provides that “the word ‘loss’ in Article 37 of the Consolidated Customs Laws, approved by Decree No 43 of the President of the Republic of 23 January 1973, must be interpreted as meaning ‘dispersion’ (dispersione) and not removal (sottrazione della disponibilità) of a product”. The following paragraph states that that provision is to constitute the authentic interpretation of Article 37 of the Consolidated Customs Laws.

2. Article 11 (1) of Council Directive 69/74/EEC of 4 March 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to customs warehousing

procedure (Official Journal, English Special Edition, 1969 (I), p. 82) already provided that “the depositor and the warehouse-keeper must be able to enjoy complete exemption from customs duties, charges having equivalent effect and agricultural levies in respect of losses occurring during the storage period and attributable to fortuitous events, *force majeure* or causes inherent in the nature of the goods”. A similar provision was to be found in Directive 69/73/EEC relating to inward processing.

Article 34 of Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit (Official Journal 1977, L 38, p. 1), replacing Regulation (EEC) No 542/69 of the Council of 18 March 1969 (Official Journal, English Special Edition, 1969 (I), p. 125), also provides that:

“Without prejudice to national provisions prescribing other cases of exemption, the principal shall be exempted by the competent authorities of the Member States from payment of duties and other charges in the case of:

- (a) goods which have been destroyed as a result of *force majeure* or unavoidable accident duly proven; or
- (b) officially recognized shortages arising from the nature of the goods.”

Those principles are codified in Council Directive 79/623/EEC of 25 June 1979 on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt (Official Journal 1979, L 179, p. 31). The fourth recital in the preamble to that directive states that “... the amount of the duties to which imports and exports are subject under the provisions in force must be paid by a natural or legal person, on whom there is an obligation to pay the said amount, which is hereinafter referred to as ‘customs debt’”. The ninth recital states that “... except

where the amount of the customs debt is paid or subject to the operation of a time bar in accordance with the provisions in force, the reasons for this extinction [of the customs debt] must be based on the recorded fact that the goods have not been used for the economic purpose which justified the application of import or export duties". Article 4 of the directive stipulates that:

"By way of derogation from Article 2, no customs debt on importation shall be deemed to be incurred in respect of specific goods:

- (a) where the person concerned proves to the satisfaction of the competent authorities that the non-fulfilment of the obligations which arise [from various customs provisions which have the effect of delaying the release for consumption of the goods] results from the total destruction or irretrievable loss of the said goods by reason of the nature of the goods themselves or because of unforeseeable circumstances or *force majeure*;

..."

3. It appears that a certain quantity of foreign manufactured tobacco and whisky belonging to Mellina Agosta Srl were removed by unknown persons in the night of 11-12 or 12-13 November 1978 from customs warehouse No 1, one of the general warehouses managed by Esercizio Magazzini Generali SpA and situated within the customs zone of Catania, inside the port area.

The theft was carried out by forcing the metal door of the warehouse and by outwitting the surveillance of the Pubblica Sicurezza [public security authorities] and of the Guardia di Finanzia [revenue enforcement officers].

Esercizio Magazzini Generali SpA, which retains the key of one of the locks of the warehouse (whilst the key to the other lock is held by the customs authorities in Catania), reported the theft to the port police authorities and, at the same time, notified the Guardia di Finanza and the customs authorities of Catania.

Nevertheless, considering that a presumption of the definitive release for consumption of the goods in question had been raised, the customs authorities of Catania, by letter of 31 January 1979, requested Esercizio Magazzini Generali, the company which manages the customs warehouse, and Mellina Agosta, the proprietor of the stolen goods, to pay LIT 78 205 695 as customs duty and value-added tax on those goods, plus interest and costs in connection with the customs duty. In the face of that request, Esercizio Magazzini Generali lodged an application through official channels, but that was rejected. Subsequently, on 14 June 1979, the customs authorities of Catania served an order requiring payment of the above-mentioned sum together with the interest and costs.

The undertakings concerned contested that order before the Tribunale [District Court] di Catania. By judgments of 16 January and 24 February 1981, that court upheld the plaintiffs' objection and ruled that the sum claimed by the customs was not payable. The Ministero delle Finanze was ordered to pay the costs.

4. The Ministero delle Finanze appealed against those judgments to the Corte d'Appello, Catania. Dealing first of all with the plaintiffs' argument that duty was not payable on the goods stolen in view of the fact that the theft took place in an "officially sealed" warehouse, the Corte d'Appello held that

that did not apply to the warehouse managed by *Esercizio Magazzini Generali*. It then observed that a point of Community law arose. Therefore, by orders dated 18 June 1982, it decided to stay the proceedings and to refer to the Court of Justice, under Article 177 of the EEC Treaty, the preliminary question:

“Whether the removal of goods subject to customs duties, carried out in the manner indicated above or, in more general and abstract terms, by methods which, in view of the foregoing arguments, assimilate such removal to a case of *force majeure* by virtue of ordinary legal principles, may fall within the concept of *force majeure* as formulated in the Community customs provisions.”

5. The orders making the reference were received at the Court Registry on 23 July 1982.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 14 October 1982 by *Esercizio Magazzini Generali*, represented by Ugo Monterosso, of the Catania Bar, on 21 October 1982 by the Government of the Italian Republic, represented by the *Avvocatura dello Stato*, in the person of Ivo Braguglia, and on 25 August 1982 by the Commission of the European Communities, represented by Alberto Prozzillo, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

By order of 19 January 1982, the Court decided to join the two cases for the purposes of the oral procedure and the judgment.

By a further order of 19 January 1982, having established that no Member State or institution had requested that the case be heard by the full Court, the Court decided to assign the case to the Fourth Chamber pursuant to Article 95 (1) and (2) of the Rules of Procedure.

## II — Written observations submitted to the Court

### 1. *Observations submitted by Esercizio Magazzini Generali*

*Esercizio Magazzini Generali* maintains that the theft of goods must release the proprietor from the obligation to pay customs duty.

It points out that Decree No 43 of the President of the Republic of 23 January 1973 refers to the special legislation relating to general warehouses, which expressly provides that the effect of *force majeure* is to exempt those charged with the storage and the temporary admission of goods deposited in that kind of warehouse from liability (Decree Law No 2290 of 1 July 1926 converted into Law No 1158 of 9 June 1927). They are also exempt from payment of duty calculated on the basis of the nature and the quantity of the goods as established when they were put into storage (Royal Decree No 126 of 16 January 1927). The undertaking maintains that the report of the *Guardia di Finanza* and the judgment of the *Tribunale di Catania*, whose findings were accepted by the *Corte d'Appello* in the order making the reference, made it clear that in relation to the theft which occurred the undertaking might not be accused of even minor negligence. According to the order making the reference, “. . . the theft took place in such a manner as to imply the

existence, according to the view of legal writers and of the courts, of a case of *force majeure* (cf. judgment No 3494 of the Corte di Cassazione of 26 October 1955) and that the event was unforeseeable” (cf. judgment No 1274 of the Corte di Cassazione of 26 April 1954). Italian academic opinion (Messineo, *Trattato di Diritto Civile e Commerciale*) also considers that the theft amounts to a case of unforeseeable circumstances or *force majeure*.

In accordance with that line of thought, the Italian courts have upheld the exemption from the obligation to pay customs duty where theft is perpetrated by a third party and where the conduct of the person who is liable for the duty is neither fraudulent nor negligent (Corte di Cassazione, judgments No 6148 of 22 December 1978 and No 431 of 18 January 1980).

On the basis of the new Law No 891, the Corte di Cassazione amended its position and held in its judgment No 5769 of 31 October 1981 that customs duty was payable on goods stolen whilst being transported by lorry. However, in a similar case the undertaking concerned maintained that Article 37 of the consolidated version contained in Decree No 43, as interpreted in the light of Law No 891, was unconstitutional and accordingly the Tribunale di Catania referred the case to the Italian Constitutional Court.

The undertaking also relies on Community law, as in its view under Directive 79/623/EEC the loss of goods as a result of unforeseeable circumstances or *force majeure* is to be regarded as ground for “exemption” from the obligation to pay duty. It argues that the Economic and Social Committee in its opinion on the proposal for a Council directive envisaged a wider category of

exemption from the payment of customs duty and that Article 11 of Directive 69/74/EEC, in spite of its conciseness, covers all the cases suggested.

The Court of Justice has also adopted that approach in judgments which refer to *force majeure*, notably in Case 158/73 (*Kampffmeyer* [1974] ECR 101), Case 149/78 (*Rumi* [1979] ECR 2523) and Case 808/79 (*Pardini* [1980] ECR 2103). The Italian Constitutional Court has given similar rulings.

Esercizio Magazzini Generali concludes that Article 22 of Law No 891 is incompatible with the Community rules, inasmuch as it restricts excessively the concept of loss due to *force majeure*, for which express provision was made, in connection with customs warehouses, by the above-mentioned Article 11 (1) of Directive 69/74/EEC and, in connection with goods in Community transit on which customs duty is payable, by Article 4 of Directive 79/623.

## 2. Observations submitted by the Italian Government

The Italian Government submits that the removal of goods on which customs duty is payable, resulting from a theft or another similar event, does not amount to the destruction or loss of those goods.

In its view, the wording of the question referred to the Court of Justice does not reveal the true nature of the problem of Community law raised by the national court. It maintains that the problem is not to establish whether Community customs law considers that theft, in certain circumstances, may be included in the concept of *force majeure*, but to

ascertain whether, even if theft may be said to constitute a case of *force majeure*, it has the effect of preventing the customs debt from arising.

Article 4 of Directive 79/623 is of fundamental importance in that respect. It only excludes the creation of the customs debt when the non-fulfilment of the obligations in question is due to the "total destruction" or the "irretrievable loss" of the goods. That provision therefore purports to cover exclusively events which make the release for consumption of the goods objectively impossible. Thus the intention of the Community legislature was in fact to limit the grounds capable of barring the creation of the customs debt to those events which prevent anyone from using the goods and therefore make the release for consumption of the goods impossible, and not those which merely prevent the person liable for duty from disposing of the goods. The removal, resulting from a theft, and the consequent unavailability of the goods does not enter into that category. Rather, according to the Italian Government, the very purpose of the theft was the release for consumption of the goods in question. Moreover, if it is accepted that the removal resulting from theft entails the "irretrievable loss" of the goods, it must necessarily be conceded that in consequence the customs debt does not arise, which would have the effect of preventing the authorities from recovering payment of the customs duty and other charge from the person responsible for the theft and for the release for consumption.

The Italian Government thinks that the same conclusion may be reached by

considering Directive 69/74, which, as regards Italy, applies to all types of customs warehouses. Article 11 (3) of that directive excludes "unauthorized removal of goods" from the concept of loss, inasmuch as it provides that in such cases, customs duties and the like are to be collected "on the goods removed" on the basis of the rates applicable on the date of removal. Thus the unauthorized removal (irrespective of who is responsible) is presumed to coincide with the release for consumption.

Article 34 of Council Regulation (EEC) No 222/77 adopts the same policy, inasmuch as it exempts the principal, in general terms, from the payment of duties and the like where the goods have been destroyed or where there is a deficiency in the goods arising from their nature.

That conclusion is inherent in the risk which the person liable for duty assumes by delaying the release for consumption of the goods and in the obligations which are incurred as a result of that delay. Even if the person concerned has acted with reasonable care, the theft of the goods does not justify his failure to fulfil the duties imposed on him by the various procedures (warehouses, temporary storage, transit and so on). It is therefore reasonable to impose liability on him for events, such as theft, which lead to the release for consumption of the goods. Any other conclusion would not only cause considerable harm to the Community and national interests in respect of the collection of duties, but would also encourage arranged "thefts"

committed with the aim of evading customs duties and other charges. Such evasion would be difficult to detect.

therefore, theft is not a case of *force majeure*.

The Italian Government considers that, if its argument is accepted, it becomes completely superfluous to examine whether theft may constitute a case of *force majeure* in Community law. Indeed, that could only be of use if it were accepted that the theft of goods amounts to the "total destruction" or "irretrievable loss" of the goods; that proposition has already been excluded.

The Court of Justice has referred to the problem of *force majeure* in several judgments, but it has never had occasion to consider the problem raised in the present case. It seems nevertheless that the theory set out above is the underlying principle in the cases in which the Court has acknowledged that an event amounted to *force majeure*. In fact most of those cases involved disputes in agricultural matters in which a legislative measure provided for the extinction of an obligation in the event of *force majeure*. Even in a case in which *force majeure* was relied upon on the basis of the general principles of law, rather than a legislative measure, (Case 149/78, *Rumi* [1979] ECR 2523) the requirement of the extinction of an obligation was upheld.

### 3. Observations submitted by the Commission

The Commission maintains that under Community customs law, in particular Directive 69/74, theft may not be regarded as a case of *force majeure*, whatever the circumstances in which it is committed.

The Commission adds that all the Member States apply the provisions in question in the manner advocated above. The Community provisions are themselves founded on international rules. The Kyoto Convention on the Simplification and Harmonization of Customs Procedures provides, in point 22 of Annex E 3 thereto, that "warehoused goods destroyed or irrevocably lost by accident or *force majeure* shall not be subjected to import duties and taxes ...". Annex B 1 to the Convention states that stolen goods shall not be regarded as destroyed or irrecoverably lost. Council Decision 75/199/EEC of 18 March 1975 (Official Journal 1975, L 100, p. 1) concluded that Convention on behalf of the Community and accepted Annex E 3 thereto concerning customs warehouses. It seems however that Annex B 1 has not yet been accepted by the Community.

To qualify as *force majeure*, an event must either present certain characteristics or have the legal effects which the legislation attributes to *force majeure*. The effect of *force majeure* is to release the parties concerned from liability. If the legislation in force excludes that effect in a specific legal context, it must be concluded that an event, even though it be unforeseeable, irresistible and not attributable to the person liable, cannot qualify as *force majeure*. In Community customs law, the person concerned is released from liability only if the goods stored in a warehouse are "lost". Stolen goods are not "lost" within the meaning of the directive. In those circumstances

In relation to customs warehouses, Directive 69/74/EEC also contains, in Article 11 (3), a special provision concerning the "unauthorized removal of goods". Where that occurs, duty is payable and no exemption is provided for. The Commission poses the question whether theft is covered by that provision rather than by Article 11 (1). That such a question must be answered in the negative may be seen both from the preparatory documents (in particular, the Commission's report which accompanied the proposal for a directive) and from a literal interpretation of the provision. A provision which refers to "unauthorized removals" presupposes the existence of "authorized removals". Such operations could only be carried out by the owner of the

goods; it may therefore be concluded that the provision is directed at the owner of the goods.

### III — Oral procedure

At the sitting on 23 March 1983, *Esercizio Magazzini Generali SpA*, represented by Ugo Monterosso of the Catania Bar, the Italian Government, represented by Ivo Braguglia, *Avvocato dello Stato*, acting as Agent, and the Commission of the European Communities, represented by Alberto Prozzillo, acting as Agent, presented oral argument.

The Advocate General delivered his opinion at the sitting on 6 July 1983.

## Decision

- 1 By two orders of 18 June 1982 received at the Court of Justice on 23 July 1982 the *Corte d'Appello*, Catania, referred to the Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty a question concerning the concept of *force majeure* for the purposes of Community customs law.
- 2 The question was raised in the context of separate proceedings between the Ministero delle Finanze and two undertakings, *Esercizio Magazzini Generali SpA* and *Mellina Agosta Srl*. It appears from the documents before the Court that in 1978 a quantity of foreign manufactured tobacco and whisky belonging to *Mellina Agosta* was stolen from the customs warehouse managed in the port of Catania by *Esercizio Magazzini Generali*. In order to carry out the theft, the thieves forced a metal sliding door fitted with two locks. The key to one of the locks was kept by *Esercizio Magazzini Generali*, whilst the key to the other was held by the port customs office. The customs authorities of Catania requested both *Esercizio Magazzini Generali* and *Mellina Agosta* to pay approximately LIT 78 000 000 as customs duty and value-added tax on the stolen goods together with the legally prescribed interest and costs.

- 3 In June 1979 the customs authorities served an order on the two undertakings requiring payment of the above-mentioned sum. The undertakings contested that order before the Tribunale di Catania which ruled that the sum was not payable. The administration appealed against that judgment.
  
- 4 Italian legislation provides that in the case of goods on which customs duty is payable the event giving rise to the fiscal obligation is constituted by their release for consumption in the customs territory. Goods are regarded as having been definitively released for consumption if they have been unlawfully removed without compliance with the customs obligations. However, the event giving rise to the obligation is deemed not to have occurred when the taxable person establishes that the failure to fulfil his customs obligations or the failure to present the goods is due to the loss or destruction of the goods through unforeseeable circumstances or through *force majeure* or as the result of events attributable to the minor negligence of a third party or the taxable person himself.
  
- 5 As a result of certain decisions of the Italian courts concerning the word "loss" used in the legislation, the Italian legislature adopted Law No 891 of 22 December 1980 which gives an authoritative interpretation of that term. The Law provides that the word must be interpreted as meaning the "dispersion" [dispersione], and not the removal of the product. The Corte d'Appello therefore considered that removal of the product (that is to say, theft) did not fall within the situations referred to by the national law, and accordingly it held that the condition for exemption from the fiscal obligation was not satisfied.
  
- 6 Nevertheless the respondents took the view that the position was different in Community law. The Community provisions provide for exemption from the payment of customs duties and other charges when goods have been destroyed as a result of *force majeure* or unforeseeable circumstances. In the circumstances of the case, the theft of the goods was committed in conditions which were such as to constitute a case of *force majeure* within the meaning of Community law.
  
- 7 In those circumstances the Corte d'Appello stayed the proceedings in the two cases and, by the above-mentioned orders, referred the following question to the Court of Justice for a preliminary ruling:

“May the removal of goods subject to customs duties, carried out in the manner indicated above or, in more general and abstract terms, by methods which, in view of the foregoing arguments, assimilate such removal to a case of *force majeure* by virtue of ordinary legal principles, fall within the concept of *force majeure* as formulated in the Community customs provisions?”

- 8 Council Directive 69/74/EEC of 4 March 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to customs warehousing procedure (Official Journal, English Special Edition 1969 (I), p. 82) prescribes the rules which must be included in the provisions of Member States laid down by law, regulation and administrative action relating to that procedure. According to Article 2 thereof, the effect of the system of customs warehouses is that customs duties, charges having equivalent effect and agricultural levies are not collected during the period of storage of goods.
- 9 According to Article 11 (1) of the directive, the depositor and the warehouse-keeper must be able to enjoy complete exemption from customs duties, charges having equivalent effect and agricultural levies in respect of losses occurring during the storage period and attributable to unforeseeable circumstances, *force majeure* or causes inherent in the nature of the goods.
- 10 Article 11 (3) provides that in cases of unauthorized removal of goods, customs duties, charges having equivalent effect and agricultural levies shall be collected on the goods removed on the basis of the rates and amounts applicable on the date of removal.
- 11 Council Directive 79/623/EEC of 25 June 1979 on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt (Official Journal, L 179, p. 31) determines the rules which must be incorporated in the Member States' provisions laid down by law, regulation or administrative action concerning, *inter alia*, the creation of a customs debt.
- 12 Article 2 thereof provides that a customs debt on importation is incurred by:
 

...

(c) The removal of goods liable to import duties from the customs supervision involved in the temporary storage of the goods or their being placed under the customs regime which involves such supervision.

13 Article 4 of the directive stipulates that by way of derogation from Article 2 no customs debt on importation is deemed to be incurred in respect of specific goods:

(a) Where the person concerned proves to the satisfaction of the competent authorities that the non-fulfilment of the obligations which arise from:

- the provisions adopted in application of Article 2 of Directive 68/312/EEC, or
- keeping the goods in question in temporary storage, or
- the use of the customs regime under which the said goods have been placed,

results from the total destruction of irretrievable loss of the said goods by reason of the nature of the goods themselves or because of unforeseeable circumstances or *force majeure*.

14 It appears from the above-mentioned article together with the ninth recital of the preamble to the directive that the reasons for the extinction must be based on the fact that the goods have not been used for the economic purpose which justified the application of import duties. In the case of theft, it may be assumed that the goods pass into the Community commercial circuit. It follows that “loss” of the goods for the purposes of the directive does not embrace the concept of theft, regardless of the circumstances in which it has been committed.

15 In reply to the question submitted by the Corte d’Appello, Catania, it should therefore be stated that according to the existing Community customs provisions the removal by third parties of goods subject to customs duty, even through no fault of the taxable person, does not extinguish the obligation to pay duty on them.

### Costs

16 The costs incurred by the Italian Republic and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable; as these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the Corte d’Appello, Catania, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber)

in answer to the question referred to it by the Corte d'Appello, Catania, by order of 18 June 1982, hereby rules:

**According to the existing Community customs provisions the removal by third parties of goods subject to customs duty, even through no fault of the taxable person, does not extinguish the obligation to pay duty on them.**

O'Keefe

Pescatore

Bosco

Koopmans

Bahlmann

Delivered in open court in Luxembourg on 5 October 1983.

J. A. Pompe  
Deputy Registrar

A. O'Keefe  
President of the Fourth Chamber

OPINION OF MR ADVOCATE GENERAL MANCINI  
DELIVERED ON 6 JULY 1983 <sup>1</sup>

*Mr President,  
Members of the Court,*

1. This reference for a preliminary ruling concerns Community customs provisions. The point at issue is whether, under those provisions, the fact that

goods subject to customs duty are removed by a third party, through no fault of the taxable person, extinguishes the fiscal obligation on the ground that the impossibility of fulfilling that obligation is attributable to a case of *force majeure*.

<sup>1</sup> — Translated from the Italian.